

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA M. MARKER and U.S. POSTAL SERVICE,  
POST OFFICE, Cheyenne, WY

*Docket No. 02-1740; Submitted on the Record;  
Issued January 24, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined appellant's rate of pay for her recurrence of disability beginning September 19, 2001.

On March 1, 1996 appellant, then a 35-year-old letter carrier, filed an occupational claim for bilateral knee conditions which were caused or aggravated by her employment. She did not stop work but, resumed limited duty. On July 10, 1996 the Office accepted appellant's claim for a bilateral knee strain. According to appellant's statement, she resigned from the employing establishment in July 1997. She pursued other employment opportunities, last working for the Department of the Interior, National Park Service as a seasonal laborer from March 23, 2001. Appellant thereafter filed a claim for recurrence of disability arising on or about June 24, 2001. She sought medical treatment for the recurrence on June 25, 2001. The Office accepted the recurrence claim of June 25, 2001. The Office paid compensation for temporary total disability beginning September 19, 2001 using the rate of pay appellant was earning as a seasonal laborer for the National Park Service.

In a decision dated May 30, 2002, the Office noted that it had no record of appellant being disabled while she was employed with the employing establishment and advised appellant that the calculation of her payrate for compensation purposes was determined to be the first date of disability, which was the date compensation began on September 19, 2001. The Office further advised that they used her reported pay rate in effect at that time of \$11.18 per hour.

On appeal appellant contends that her Postal Service wages should have been used instead of the Park Service wages as she had been earning higher wages when she was injured at the Postal Service.

The Board has duly reviewed the case record and concludes that the Office did not properly determine appellant's pay rate for her recurrence of disability beginning September 19, 2001.

Under the Federal Employees' Compensation Act, compensation is based on the employee's pay rate as determined under section 8101(4). This section defines "monthly pay" as: "The monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater."<sup>1</sup>

Following her employment injury on March 1, 1996,<sup>2</sup> appellant worked limited duty with restrictions and resigned in July 1997. Thereafter, she worked full time in various capacities. By her own account, appellant has been working as a seasonal laborer for the National Park Service since March 23, 2001 earning \$11.18 per hour. As appellant did not work in the Park Service position for six months before sustaining her recurrence of June 25, 2001 and being rendered totally disabled on September 19, 2001, the Board finds that, for purposes of appellant's rate of pay for this recurrence, the monthly pay at the time compensable disability recurred may not be used. Accordingly, the Office erroneously calculated appellant's pay rate based on the \$11.18 hourly wage she was earning at the Park Service.

The Board has held that where an injury is sustained over a period of time, as in the present case, the date of injury is the date of last exposure to those work factors causing injury.<sup>3</sup> In the present case, the date of appellant's last exposure to the employment factors that caused appellant's accepted bilateral knee strain condition appears to be July 25, 1997, the date she last worked for the employing establishment. As the record presently before the Board is devoid of any information concerning the pay rate in effect on July 25, 1997, the Board will remand the case for development of this issue. On remand the Office should make a determination as to the correct pay rate for compensation purposes with respect to the accepted employment conditions. After such further development as the Office deems necessary, it should issue an appropriate decision with respect to appellant's rate of pay for her recurrence of disability.

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<sup>1</sup> 5 U.S.C. § 8101(4); *Jeffrey T. Hunter*, 52 ECAB \_\_\_\_ (Docket No. 99-2385, issued September 5, 2001).

<sup>2</sup> This was the date appellant first reported her injury and received medical treatment.

<sup>3</sup> See *Sherron A. Roberts*, 47 ECAB 617 (1996); *Hugh A. Feeley*, 45 ECAB 255 (1993); *Jack R. Lindgren*, 35 ECAB 676 (1984).

The decision of the Office of Workers' Compensation Programs dated May 30, 2002 is set aside and the case is remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC  
January 24, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member